

REMARKS

Claims 1-30 have been canceled herein. Such cancellation is without prejudice on the merits to further prosecution of these claims in one or more continuing applications. Claims 31, 34, 35, and 37 have been amended herein. Claims 38-43 are newly added. Applicants request that Claim 32 and method Claims 34-37 be rejoined and examined on the merits (see below for a full discussion). Claims 31-43 remain active. Favorable reconsideration is respectfully requested.

Claim 31 has been amended to recite the inclusion of "water" in the composition. Claim 31 as filed recited an "aqueous" preservation medium, which (by definition) must include water. Claims 31 and 34 have also been amended to recite that the polyhydroxy compound is a "disaccharide." Verbatim support for this change can be found in the specification at page 11, lines 11-12. Thus no new matter is added by these change to Claim 31.

Claims 31, 34, 35, and 37 have also been amended to clarify a number of typographically oddities, in accordance with the Examiner's recommendations.

Regarding new claims 38 and 39, Claim 38 is equal in scope to Claim 33, but recast as an independent claim. New claim 38 also takes into account the comments the Examiner made with respect to the rejection under §112, second paragraph (see below). Because Claim 33 was not made subject to any art-based rejection, Applicants respectfully submit that new Claim 38 is likewise free from the prior art. New Claim 39 further specifies that the composition includes albumin. New method Claims 40-43 have been submitted taking into account these same factors (*e.g.*, new Claim 43 explicitly recites using trehalose as the polyhydroxy compound). Applicants respectfully submit that new Claims 38-43 are allowable. Notification of the same is earnestly solicited.

The specification has been amended to update the status of the earlier applications recited in Applicants' priority claim.

The following remarks address the issues presented in the Office Action in order of their appearance.

Restriction and Election of Species:

In the prior action, the Office requested both a restriction and election of species. In response to the restriction requirement, Applicants elected Claims 31-33, with traverse.

The Office itself formulated the election of species requirement, and required Applicants to elect a specific aqueous preservation medium "in which all constituents are fully defined." The Office went on to state that "The quantity of polyhydroxy compound (presumably trehalose) and phosphate ions should also be specified." Applicants responded stating that their preferred species was an aqueous preservation medium "comprising" trehalose, wherein the concentration of polyhydroxy compound in the medium is 45 mM, and the concentration of phosphate ions in the medium is 45 mM. Applicants went on to indicate that Claims 31-33 read on the elected invention.

Applicants traverse the Office's withdrawal of Claim 32 in the present action. Applicants elected a species consonant with the Office's requirement, using the open-ended phrase "comprising." A search for the elected species (platelets, 45 mM trehalose, 45 mM phosphate) as recited in Claim 31 necessarily encompasses the subject matter of Claim 32; Claim 32 depends from Claim 31. Applicants therefore submit that the Office's withdrawal of Claim 32 from further consideration is improper because it is inconsistent with the Office's articulation of the election of species requirement. Applicants respectfully request that Claim 32 be rejoined along with the elected group and considered on the merits.

Applicants also respectfully request that Claims 34-37 as amended and new Claims 40-43 (all drawn to methods) be rejoined pursuant to the holdings in *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995), and *In re Brouwer*, 37 USPQ2d 1663 (Fed Cir. 1996).

Applicants also wish to comment briefly on the Office's characterization of the term "phosphate ions" as recited at the bottom of page 2 of the Office Action. A "phosphate ion" is what it is, namely PO_4^{3-} . Claim 31 recites only "phosphate ions." The phosphate ions themselves can be derived from any source, as noted at page 13, line 16 of the application as filed. Applicants make the point only because the Office recites, at the bottom of page 2 of the Office Action, various "compounds," such as ATP,

polynucleotides, and phosphorylated proteins that "would qualify" (that is, "qualify" as sources for phosphate ions, which is true to the extent that the compounds noted by the Office will ionize in the preservation solution to yield the phosphate ions required by the claims). Applicants wish to note for the record, however, that the claim language itself recites only one (1) molecular entity, namely "phosphate ions," in a positively stated concentration, regardless of the source of those phosphate ions. Thus an election of species based, at least in part, on the source of those phosphate ions, is improper.

Obviousness-Type Double-Patenting:

The rejection of Claim 31 for obviousness-type double-patenting in view of U.S. Patent No. 6,653,062 has been overcome by the filing of an executed Statement Under 37 CFR §3.73(b), an executed Terminal Disclaimer, and the required fee (all three of which are submitted herewith). Withdrawal of the rejection is respectfully requested.

Rejection of Claims 31 and 33 Under §112, Second Paragraph:

This rejection is believed to have been overcome by appropriate amendment to Claim 31. Specifically, Claim 31 has been amended to recite the presence of water explicitly. The addition is explicitly supported by the preamble to Claim 31 as filed, which recites an "aqueous" preservation medium. Because "aqueous" by definition means a solution in water, no new matter is added.

Rejection of Claim 31 Under §102(b) in View of Spargo, U.S. Patent No. 5,736,313:

This rejection is believed to have been overcome by appropriate amendment to Claim 31. As amended, the claim now requires that the polyhydroxy compound be a "disaccharide."

Applicants respectfully note that the passage from Spargo cited by the Office, column 8, line 25, recites "glucose" not sucrose:

Platelets were resuspended in a buffer (buffer C) containing: 139 mM **glucose**, 33 mM citrate (Na salt), 12 mM Na₂HPO₄, 3 mM NaH₂PO₄, 40 mM (NH₄)₂HPO₄, 2 mM adenosine, 2 mM adenine, and 30% (w/v) hydroxyethyl starch.

(Spargo, column 8, lines 24-27; emphasis added..)

Glucose is a monosaccharide, not a disaccharide. Applicants therefore submit that this rejection has been overcome by the positive recitation within Claim 31 that the polyhydroxy compound must be a disaccharide. Withdrawal of the rejection of Claim 31 in view of the Spargo patent is respectfully requested.

Rejection of Claim 31 Under §102(b) in View of Yausa, 5,753,428:

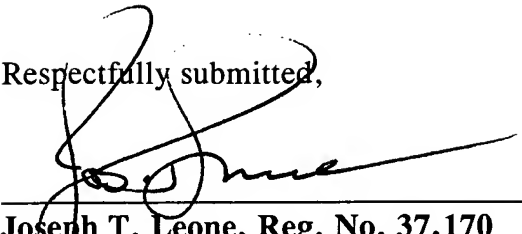
This rejection is believed to have been overcome by appropriate amendment to Claim 31. As amended, the claim now requires that the polyhydroxy compound be a "disaccharide."

The Yausa patent, in contrast, refers to compositions containing glycerol. See, for example, the passage cited by the Office: column 8, lines 40 *et seq.* Glycerol is polyalcohol, not a disaccharide. Applicants therefore submit that this rejection has been overcome by the positive recitation within Claim 31 that the polyhydroxy compound must be a disaccharide. Withdrawal of the rejection of Claim 31 in view of the Yausa patent is respectfully requested.

CONCLUSION

Applicants submit that the application is now in condition for allowance. Early notification of such action is earnestly requested.

Respectfully submitted,


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